

**TOWN OF DAVIE
WORKSHOP MEETING
JANUARY 5, 2004**

Present were Mayor Truex, Vice-Mayor Starkey, Councilmembers Crowley, Hubert and Paul. Also present were Town Administrator Willi, Town Attorney Kiar, and Town Clerk Muniz recording the meeting.

Mr. Willi advised that the Town had an ordinance allowing three additional billboard sites. He explained that the purpose of the workshop was to decide on a process for how each site was to be chosen. Mr. Willi indicated that special counsel Mike Burke, would provide additional information to help give Council direction on how to choose the sites.

Mr. Burke distributed excerpts of the Town's Code current and advised that the Town's Code defined a billboard as an off-premise or off-site sign. He stated that the Code prohibited such signs until 1997, when an exception was added to permit an additional ten billboards along I-595, I-75 and the Florida Turnpike. Mr. Burke advised of a provision stating that those ten billboards had to provide up to 5% of their revenues to a charitable organization that served the community. He recommended three different options with respect to installation of the three new billboards. Mr. Burke advised that the first option was to delete the exception added to the Code in 1997 as the additional ten billboards had been erected.

Mayor Truex asked if the ten billboards would be up forever. Mr. Burke responded in the affirmative and added that under Florida laws, billboards were difficult and expensive to remove.

Vice-Mayor Starkey indicated that she thought there was an annual renewal on a lease involved. Mr. Burke stated that the current Code provided that each year a renewal of the permit be submitted to ensure that contributions were being made.

Mr. Burke advised that the second option was to permit the billboards and specify location, size, height, construction, zoning, residential separation, and charitable contributions that would be necessary. The third option was to expand the current exception by doing an inventory of current billboards and determining a procedure for approval, via staff review, a lottery system, or criteria-staff-Council.

Vice-Mayor Starkey asked if the current Code had any provisions for abandonment if billboard owners did not pay the state. Mr. Burke indicated that he did not see any provision that would address abandonment. He advised that billboard owners had to pay permit fees to the Department of Transportation. Vice-Mayor Starkey suggested including provisions in the Code for cases of abandonment in the future. Mr. Burke advised that past laws had prohibited billboards and he reasserted that under current laws, signs could remain if their owners continued to pay the State.

Mr. Burke suggested that the Town do an inventory of current billboards. He suggested having staff develop more subjective criteria with regard to the three proposed billboards. Mr. Burke explained that he was looking for how staff could go beyond objective criteria to make a choice amongst different applicants who all met existing criteria. Mayor Truex asked about the legality of this option. Mr. Burke advised that it could become a challenge if billboard owners were required to contribute funds to charities from billboards erected on private property. Mayor Truex asked if any preference could be given to Town property. Mr. Burke advised that Town property had different regulations and restraints from those affecting private properties.

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Vice-Mayor Starkey voiced her concern about the legality of the current ordinance and the new ordinance. She asked if compatibility and distance criteria were met, would the financial concerns not be a priority. Mr. Burke indicated that the Town's ordinance had not been challenged in court.

Mr. Burke spoke about the first amendment challenges that could be faced by restricting certain types of signs. He advised Council that the Town could adopt regulations, which furthered "legitimate government purposes". Mr. Burke stated that the more the regulations related to a sign's content, the more problems could develop. He advised that the courts required that commercial speech not be treated more favorably than non-commercial speech.

Councilmember Paul asked about Mr. Burke's statement about adopting regulations for legitimate government purpose. Mr. Burke advised that governments had to participate in regulating signage for appearance and safety reasons. He stated that the most vulnerable issue to explore was determining what legitimate government purpose was served by the required charitable contributions. Mr. Burke indicated that most courts would not regard charitable giving as a function of government and advised this would be a problem if challenged. Councilmember Paul asked if the Town were challenged on the charitable contributions for the three new sites, what would happen to the existing ten billboards that currently donated money. Mr. Burke indicated that if the portion of the law requiring permits were stricken, it would no longer be a requirement of the owner of the billboard.

Mayor Truex asked if it would be legal to state that only charities could apply for these permits. Mr. Burke indicated in the negative. He again advised of three options to consider, namely: 1) to maintain the general rule prohibiting billboards; 2) to permit billboards as they fit into the Town's regulations and zoning requirements; or 3) to expand the current exception with regard to the specific number of new billboards to be permitted.

Vice-Mayor Starkey indicated that she wanted to see the applications to identify where the billboards were being proposed in relation to the existing sites. Mr. Willi indicated that staff had limited information concerning the inventory of existing billboards and advised that staff wanted to establish criteria for incoming applications. He indicated that nine sites were being proposed by five different charities.

Vice-Mayor Starkey stated she wanted to see some inventory of existing billboards, as there were probably signs along perimeters which may not necessarily be related to the Town.

Mayor Truex asked if it would be legal to limit the term of the existence of billboards. Mr. Burke indicated he was unsure and would have to research this question further.

Mayor Truex asked about the regulation of billboard content. Mr. Burke stated that although obscenity was prohibited, what was allowed under law was a high tolerance for content. He stated that sign content was currently difficult to regulate.

Mayor Truex asked if illuminated billboard signs would be legal in Davie. Mr. Burke indicated that no billboard was currently legal. However, he advised that there was a Code with regard to illumination, which Council could review.

Councilmember Hubert asked about time restrictions on billboards. Mr. Burke indicated that once approved, it would be very difficult to require an owner to take down a billboard.

Councilmember Hubert asked if Mr. Burke thought a lottery was the fairest option. Mr. Burke advised that when governments used subjective rather than objective criteria, problems

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often resulted. He felt that objective criteria should be set with a subjective component, with regard to final selection of permits.

Mayor Truex asked if anyone from the audience wished to speak.

Glenn Flutie, president of Professional Display Ads, stated that his company had been working in partnership with his charities and the sites desired for his billboards were not in high impact areas. He felt that the fairest way to determine the sites was based on who submitted applications first. Mr. Flutie indicated that he had submitted two sites along the Turnpike.

Daniel Harden, representing Wilton Manors Street Systems, felt that all applicants should be required to have a lease agreement with the property owner. He thought the fairest way to select an applicant was to issue the permit to the first company that met all the criteria, including a lease agreement. Mr. Harden presented a display board of a Town map identifying billboard sites permitted in 1997, along with the charities involved. He also provided a list of two sites for which his company applied.

Councilmembers briefly discussed aspects of Mr. Harden's two sites.

Vice-Mayor Starkey asked Mr. Harden if he had leases with the charities. Mr. Harden indicated he had a lease with one charity, Nova Southeastern University (NSU), and leases with both property owners.

Mayor Truex asked if the amount for Nova Southeastern University was \$8,000. Mr. Harden responded in the negative and advised that his contract with NSU was for \$25,000 per year. Vice-Mayor Starkey asked if those funds would be used to provide medical charities. Mr. Harden advised that NSU had stated the funds would be used to help Davie residents. He felt that all billboard companies should contribute \$25,000 back to the Town.

Mr. Flutie indicated sites along the Turnpike where his signs would be located. He also advised he would be willing to give up one site to accommodate the three new proposed signs. Councilmembers briefly discussed aspects of Mr. Flutie's sites.

Mayor Truex asked Mr. Flutie how many sites he had. Mr. Flutie explained he had a lease on one site and a letter of intent on another.

Councilmember Hubert asked Mr. Flutie if he was willing to increase his charitable donation to \$25,000. Mr. Flutie indicated in the affirmative and advised that his billboard content had no objectionable content.

Vice-Mayor Starkey asked Mr. Flutie if he met all criteria and compatibility requirements. Mr. Flutie responded in the affirmative.

Allison Ogilvie, of Gold Coast Outdoor, indicated that her firm would comply with the other applicants' recommendation to only take one site each and contribute funds to charities. Ms. Ogilvie indicated where her signs would be located. Councilmembers briefly discussed aspects of Ms. Ogilvie's sites.

Mr. Harden asked if any other companies had applied and asked how Council would choose among a variety of applicant who wanted the same thing, who also had acceptable locations per the ordinance. Mayor Truex indicated that the process had to be opened up to the public.

Vice-Mayor Starkey felt that compatibility was always a strong factor when considering permit applications. She stated that she would not want to deviate from existing restrictions

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and height. Vice-Mayor Starkey felt that any ordinance prepared should establish similar criteria to the existing Codes.

Councilmember Paul voiced her concerns about the ordinance and asked that if it were passed, that the selection process be fair. She spoke about certain existing billboards which she felt were too close to residences.

Councilmember Hubert was not opposed to the new billboards, but felt that the distribution of donations should include more charities than NSU, EASE and HOPE. She was also concerned that the Town could not be sure that charities would be paid in future years.

Mr. Willi indicated that the existing Code required that a CPA representing the owner present annual statements to the Budget and Finance Department.

Mayor Truex referred to Mr. Zacco, who did not pay charities from his billboard revenue. Mr. Willi advised that Mr. Zacco's billboard pre-dated the new ordinance requiring charitable contributions. Vice-Mayor Starkey advised that Mr. Zacco had previously indicated his willingness to contribute to charities. Mr. Willi advised that it could be difficult to collect funds from Mr. Zacco if the requirement to pay charities was not made a condition for approval. Council asked that Mr. Zacco be contacted.

Councilmember Crowley was in favor of the three new billboards but wanted staff to create some criteria. He indicated that the Town also needed an inventory of existing billboards.

Mr. Willi indicated that the ordinance could be moved for second reading, while staff worked on criteria and prepared a listing of sites to be approved.

Vice-Mayor Starkey asked if the Town considered one site at a time based on criteria. Mr. Willi responded yes. Vice-Mayor Starkey asked if factors such as application dates and ownership of existing billboards were considered as part of the criteria. Mr. Willi explained that these were part of the application process. He suggested certifying different sites, then allowing a specific period for applicants to contract for the sites, after which staff would review the criteria for permitting and certification.

Mayor Truex asked about the distance separation for billboards on the Seminole Indian property. Mr. Flutie indicated that the Seminole Indian sites were on federal property and not subject to the DOT distance regulations.

Councilmember Paul felt the lottery option might be the fairest. Councilmember Hubert asked if this would include the charities. Mr. Willi advised that Council would certify the sites, and then take a lottery for the charities. Vice-Mayor Starkey felt the lottery process was not fair. Councilmember Hubert felt the lottery system was fair.

Mayor Truex indicated he was concerned about existing signs and felt the Town had little control over content. He stated he would not be in favor of new billboards, unless they could be restricted to industrial areas.

Councilmember Crowley felt the lottery system could be problematic.

Councilmember Paul was concerned that the primary purpose of the billboards was the charitable contributions.

Vice-Mayor Starkey also voiced her concern about future problems if the ordinance was challenged based on the premise of charitable contributions.

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Councilmember Crowley asked if the Town changed the Code to add three more sites, then decided not to choose any, would the Town have to select three different sites. Mr. Burke advised that under the Code, Council could still reject a site even if an application met all the requirements of the Code.

Councilmember Hubert was in favor of moving forward on the new ordinance. Mayor Truex did not object to moving forward unless the billboards were restricted to industrial areas. Vice-Mayor Starkey agreed with Mayor Truex. Mr. Burke advised that concern about locations could be addressed by zoning and distance criteria.

Vice-Mayor Starkey felt that the existing ten billboards were more than enough.

Mr. Burke indicated the Town could decide on using a first-come, first-serve, lottery or subjective criteria system.

Councilmember Paul stated she was not happy about the billboards along I-595 and along I-75.

Vice-Mayor Starkey felt if the Town established criteria, distance separation and industrial areas should be considered.

Mayor Truex asked if Mr. Burke would re-write the ordinance. Mr. Willi advised that if the ordinance were to be amended based on Council's comments, then it would have to be re-advertised and brought before the Local Planning Agency before returning to Council. Mayor Truex suggested having Mr. Burke work on changing the language to restrict billboard sites to industrial sites, with a 3,000 feet separation. He suggested having Mr. Burke present a revised ordinance before Council before further discussion would take place. Mr. Burke indicated he would attempt to draft an application process to include criteria, suggestions and recommendations discussed. He suggested that language could be included to characterize a conditional use, if approved by Council.

Vice-Mayor Starkey was not in favor of the "conditional use" language as she felt it would open the door for challenges. She advised that the process was still subject to approval by Council.

Councilmember Hubert asked when this would come before Council again. Mr. Burke indicated that he could get a draft back to Mr. Willi by the end of the week.

There being no further business to discuss and no objections, the meeting was adjourned at 7:54 p.m.

Approved_____

Mayor/Councilmember

Town Clerk

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